IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION Nos. 3306 of 1996 & 8797 of 2003

1) WRIT PETITION NO : 3303 of 1996

Between:

N. Ramachandra Rao, son of Venkata Subbaiah,
aged 60 years, Industrial Promotion Officer (Retd.),
D.No.23/1325, Ashoknagar, Tekkemitta, Nellore,
Nellore dist. … Petitioner

AND

1 State of Andhra Pradesh, rep. by the Secretary to
Government, Industries and Commerce Department,
Secretariat, Hyderabad
2 The Director General, Anti Corruption Bureau,
Andhra Pradesh, Hyderabad.
3 The Deputy Superintendent of Police, Anti Corruption Bureau,
Nellore Range, Dargamitta, Nellore-4.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, more in the nature of Mandamus, declaring the Memo No.375/I.E/95, dated 07.11.1995 and the consequential G.O. Ms. No.10, Industries & Commerce (I.E.) Department, dated 16.01.1996 issued by the first respondent as arbitrary, illegal, malafide and violating Article 14 and21 of the Constitution of India and against the principles of natural justice and set aside the same and issue consequential directions, restraining the respondents 2 and 3 from proceeding against the petitioner in pursuance of the G.O.Ms. No.10, Industries & Commerce (I.E.) Department, dated 16.01.1996.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH

Counsel for the Respondent No.1: G.P. for Industries & Commerce

Counsel for the Respondents 2 and 3: Mr. V.Ravikiran Rao, S.C. –cum- Spl. P.P. for A.C.B.

2) <u>WRIT PETITION NO : 8797 of 2003</u>

Between:

N. Ramchandra Rao, S/o.of Venkata Subbaiah,
aged 67 years, Industrial Promotion Officer (Retd.),
D.No.23/1325, Ashok Nagar, Tekkemitta,
Nellore, Nellore District.

..... PETITIONER

AND

1 State of A.P., rep. by its Secretary, Industries &
& Commerce Department, Secretariat Hyderabad.
2 The Director General, Anti Corruption Bureau,
A.P., Hyderabad.
3 The Dy. Superintendent of Police, Anti Corruption Bureau,
Nellore, Nellore District.
4 State of A.P. rep. by its Standing Counsel-cum-Special
Public Prosecutor for ACB, High Court of A.P.,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction in the nature of Mandamus or otherwise, declaring the orders of the Hon'ble Special Judge for SPE & Anti-Corruption Bureau Cases, Nellore in commencing the trial in complainant No.2/96 as arbitrary, illegal and contrary to the interim order passed by this Hon'ble High Court in Writ Petition Misc. Petition No.3996/96 in Writ Petition No.3303/96 dt.22.2.96 and issue consequential directions restraining the Hon'ble Special Judge for SPE & Anti-Corruption Bureau Cases, Nellore from proceeding with the trial in complainant No.2/96 in pursuance of orders dt.20.2.2003 in the interest of justice.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH

Counsel for the Respondent No.1: G.P. for Industries & Commerce

Counsel for the Respondents 2 and 4: Mr. V.Ravikiran Rao, S.C. –cum- Spl. P.P. for A.C.B.

The Court made the following :

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION Nos. 3303 of 1996 and 8797 of 2003

COMMON ORDER:

Since both the Writ Petitions are connected to each other, they are being taken up together for disposal.

Writ Petition No.3303 of 1996 is filed seeking a writ of mandamus challenging memo No. 375/Industries & Commerce/95, dated 07.11.1995 and consequential G.O.Ms. No.10, Industrial & Commerce (I.E.) Department, dated 16.01.1996 issued by the first respondent and for consequential directions restraining the respondents 2 and 3 from proceeding against the petitioner in pursuance of the aforesaid G.O.

The relevant facts leading to filing of this Writ Petition, in brief, are that the petitioner was appointed as Lower Division Clerk in Industries Department on 15.07.1956 and got promoted from time to time and has been working as Industrial Promotion Officer ever since 1983, without any complaint. At the instance of A.Das alias M.G.R.Das, who got a criminal record and bad reputation, Anti Corruption Bureau authorities foisted a false trap against the petitioner on 04.04.1994 wherein the complainant put Rs.500/- stealthily in an application form, without knowledge of the petitioner. It is submitted that the petitioner never demanded any illegal gratification from the complainant nor had he agreed to do any favour to him therefor. Thereafter, the petitioner made representations to the respondents 3 and 2, with

documentary evidence to prove his innocence, stating the trap is on a false complaint and at the instance of the rival colleagues who are envied to his position, and further that the no disproportionate assets are found by the Anti Corruption Bureau authorities during search of his house. In spite of it, the authorities recommended his prosecution to the Government. It is submitted that, subsequently the petitioner made a detailed representation with documentary evidence, to the Government, which is competent authority to accord or reject permission for prosecution, explaining the above facts, and the Government, after careful consideration of his representation and the relevant material on record, issued G.O.Ms. No.32, Industries and Commerce, dated 24.02.1995, directing to drop further action against the petitioner rejecting the authorities' proposal for his prosecution.

The petitioner further submits that he retired from service on 31.07.1994 after attaining age of superannuation, and received all pensionary benefits and pension ever since. He further submits that from 04.04.1994 to 24.02.1995, he suffered mental agony and humiliation, which adversely affected his health.

The petitioner submits that the Government issued the impugned memo dated 07.11.1995, wherein the Government decided to reopen the case accepting the proposal of the second respondent to prosecute me, besides rescinding the G.O. Ms. No.32. The decision of the Government in issuing the impugned memo is unilateral, arbitrary and against the principles of natural justice, without issuing any notice and opportunity to the petitioner. It is further submitted that without cancelling G.O.Ms. No.32 the Government has no power and jurisdiction to issue G.O. Ms. No.10, dated 16.01.1996 deviating from the earlier decision, as it has already exercised its jurisdiction while issuing the earlier G.O. Ms. No.32. The Government has not assigned any special reasons to rescind from its earlier decision and it is only an attempt to harass the petitioner. Hence, the Writ Petition.

This Court, as per the order in W.P.M.P. No. 3996 of 1996, dated

22.02.1996, suspended the impugned memo dated 07.11.1995 and the consequential G.O. Ms. No.10, dated 16.01.1996.

The first respondent, on one hand, and the respondents 2 and 3 on the other, filed their separate counter affidavits denying the averments in the petition and contending that the trap is genuine and in the First Investigation Report, the reason for demanding the illegal gratification is clearly mentioned and the relevant test on petitioner was positive. It is submitted that after careful examination and thorough discussion of the further report and recommendation of the Director General, Anti Corruption Bureau, and the A.P. Vigilance Commission, and having regard to the allegations levelled against the petitioner, the Government issued G.O. Ms. No.10, dated 16.01.1996. It is further contended that the Government has the power to rescind its orders when any new material or evidence which could not be produced or was not available at the time of passing the order under review, was produced before it later. The Writ Petition is, therefore, not maintainable and is liable to be dismissed.

The latter Writ Petition no. 8797 of 2003 is filed challenging the action of the Special Judge for SPE & ACB Cases, Nellore in commencing trial in C.C. No.2 of 1996 inspite of the orders of this Court in the aforesaid W.P.M.P. No.3996 of 1996 in W.P. No.3303 of 1996, dated 22.02.1996, as illegal and arbitrary. In pursuance of which, this Court stayed all further proceedings in C.C. No.2 of 1996 on the file of the Special Judge, SPE & ACB cases, Nellore, as per the order in W.P.M.P. No.11328 of 2003, dated 06.05.2003.

The respondents 2 to 4 filed their counter affidavit denying the averments in the affidavit and contending that during pendency of the former Writ Petition, this Writ Petition is not necessary. It is stated that the then Special Judge for SPE & ACB Cases, Nellore gave only trial schedule and no witness was examined as such. Hence, the Writ

Petition is not maintainable and is liable to be dismissed.

The learned counsel for the petitioner Mr. P.V.Krishnaiah contended that as per G.O.Ms. No.32, dated 24.02.1995, the Government has not accepted the recommendations made by the Director General of Anti Corruption Bureau and the Vigilance Commissioner, for sanction of prosecution of the petitioner and issued directions to the concerned to drop further action. Hence, the Government has no authority to reopen the case and accept the proposals of the second respondent to prosecute the petitioner. Therefore, issuance of G.O. Ms. No.10, dated 16.01.1996 according sanction for prosecution of the petitioner is illegal and arbitrary. The learned counsel relied on unreported judgment of the Supreme Court of India arising out of S.L.P © No.17240-17241 of 1995, dated 23.08.1996, to contend that in the case on hand, no new material is produced before the Government for reviewing its earlier orders and hence, prays to set aside the impugned orders.

On the other hand, the learned counsel appearing for the respondents contended that the order passed by a higher authority shall supercede any order passed by a lower authority in respect of the same case and the Government after thorough discussion of the report and recommendations of the Director General of Anti Corruption Bureau and the Vigilance Commissioner, decided to rescind the order issued in G.O. Ms. No.32, dated 24.02.1995, vide memo no. 375/Industries & Commerce/95, dated 07.11.1995 and issued orders to prosecute the petitioner. He further contends that in any view of the matter, this issue can be decided by the competent court of criminal jurisdiction where the case is pending.

Heard the learned counsel on either side and perused the material on

record.

On 04.04.1994, the petitioner was involved in a trap laid by the Anti Corruption Bureau authorities, while he was working as Industrial Promotion Officer. A case in crime no. 3/RC-NLR/94 on the file of the Special Judge for SPE & ACB cases, Nellore was registered against the petitioner. The Director General of Anti Corruption Bureau and the Vigilance Commissioner sent letters to the Government for according sanction to prosecute the petitioner. The Government examined the same carefully and observed that a local person with bad reputation was the complainant to trap the employee and this was evidently a forced trap; evidence on demand and acceptance is not well established; and no disproportionate assets have been found in the house of the petitioner in the search conducted by the Anti Corruption Bureau authorities. Therefore, sanction of prosecution recommended by the Director General of Anti Corruption Bureau and the Vigilance Commissioner was not accepted. Thereupon, the Vigilance Commissioner and the Anti Corruption Bureau addressed a letter and the Government accepted the proposal to prosecute the petitioner besides rescinding G.O. Ms. No.32, dated 24.02.1995. Thereupon, the present G.O.Ms. No.10, dated 16.01.1996 was issued according sanction for the prosecution of the petitioner for the offence under Sections 7, 11, 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Challenging the same, Writ Petition No. 3303 of 1996 was filed. Since the record was not traced in Writ Petition No.3303 of 1996, the petitioner was permitted to file duplicate set of back papers.

Thereafter, the case was taken on file as C.C. No.2 of 1996 on the file of the Special Judge for SPE & ACB cases, Nellore and trial schedule of the case was fixed in it. Writ Petition No.8797 of 2003 was filed challenging the trial in the Special Court.

G.O. Ms. No.32, dated 24.02.1995 was issued by Government dropping prosecution against the petitioner, based on relevant factors and the material on record and also on the ground that the complainant was having bad reputation; that there was evidently a forced trap and the evidence on demand and acceptance is not well established and that nothing has been found in search of the house of the petitioner. These are the matters which are required to be decided on adducing evidence before the Trial Court. Basing on the material available on record, it is not for the Government to appreciate the material on record and come to conclusion stating that it was a forced trap and the complainant was having a bad reputation. Therefore, the reasons for not accepting sanction to prosecute the petitioner are totally unwarranted and unsustainable. Perhaps, there is a reason for addressing a D.O. letter by Vigilance Commissioner on 04.05.1995 and by the Director General of Anti Corruption Bureau on 13.03.1995 to reopen the case. Thereupon, the Government issued G.O. No.10, dated 16.01.1996 according sanction to prosecute the petitioner. The Government accorded the sanction on elaborate consideration of the matter.

When a power is given to the Government, it is implied that it has power to review its earlier orders. The learned counsel appearing for the petitioner relied upon a decision of the Supreme Court of India arising out of S.L.P © No.17240-17241 of 1995, dated 23.08.1996, where it was held :

> **“ The invocation of Rule 41 would be justified only if there is “any new material or evidence which could not be produced or was not available at the time of passing the order under review”. There is no explanation on behalf of the State Government as to why this communication from one of its officers to another could not be produced or was unavailable at the time of passing the earlier order of penalty. The rule also contemplates that such new material or evidence must have the effect of changing the nature of the case. The charge against the appellant was of dereliction of duty by not taking**

necessary steps to meet the violence of the crowd. A communication which empowered him to use fire power, if necessary, can not be said to have the effect of changing the nature of the case. The invocation of the rule was wholly unjustified."

The learned standing counsel for the A.C.B. relied upon Rule 41 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, which reads that the Government at any time either on its own motion or otherwise, review any orders passed under these Rules when any new material which could not be produced or was not available at the time of passing the order under review and it has effect of changing the nature of the case as given or has been brought to its notice.

The Government issued G.O. No.32, dated 24.02.1995, after thorough discussion of the recommendations of the Director General of Anti Corruption Bureau and the Vigilance Commissioner, directing to reopen the case against the petitioner. What are the new material or evidence, which could not be produced at the time of passing G.O. Ms. No.32, dated 24.02.1995 and which has been produced at the time of passing G.O. Ms. No.10, dated 16.01.1996, are required to be gone into at the time of trial only. When there is total non-application of the mind in issuing the orders in G.O. Ms. No.32, dated 24.02.1995, the said G.O. can not be said to be an order made in accordance with law. Even assuming for a moment that the impugned order is invalid order, then what is its effect ? The law in the aspect is no longer *resintegra*. I n *State, by police Inspector v. T.Venkatesh Murthy,* the Apex Court held :

"A combined reading of sub-sections (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988 makes the position clear that notwithstanding anything contained in the Criminal Procedure Code, 1973, no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in

appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby".

From a reading of the above decision of the Apex Court, it is clear that unless failure of justice has been occasioned on the ground that there was an error, omission or irregularity in the sanction, it can not be set aside. It is also further held that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. Therefore, in the case on hand, it is for the petitioner to establish that there was a failure of justice occasioned in view of error, omission or irregularity in the sanction given by the Government in G.O. Ms. No.10, dated 16.01.1996. Basing on the further report of the Director General of the Anti Corruption Bureau, the Government reviewed its earlier orders and issued the G.O. Ms. No.10, dated 16.01.1996, since the Government can review its earlier orders as per the regulations when there is a new material placed before it. Therefore, the proceedings issued by the Government do not suffer from any legal infirmity so as to call for interference by this Court.

It is needless to say that the finding with regard to the impugned proceedings is given for the purpose of disposal of these Writ Petitions. That does not mean that it is a valid sanction because the same has to be decided by competent court of criminal jurisdiction where the criminal case is pending against the petitioner. All the contentions raised in this Writ Petition are left open. Basing on the evidence available on record, the learned Special Judge for SPE & ACB cases, Nellore, can decide the issue whether there is an appropriate sanction to prosecute the petitioner or not.

The Writ Petitions are devoid of merits and the same are, accordingly, dismissed. No costs.

08-07-2005

K.C.Bhanu, J.

DRK

Copy to:

1 The Secretary, State of A.P., Industries & Commerce Department, Secretariat, Hyderabad.

2 The Director General, Anti Corruption Bureau, A.P., Hyderabad.

3 The Dy. Superintendent of Police, Anti Corruption Bureau, Nellore.

4) Two CCs to the G.P. for Industries & Commerce, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5) Two CCs. To Mr. V.Ravikiran Rao, S.C. –cum- Spl. P.P. for A.C.B., High Court of A.P., High Court buildings, Hyderabad (o.u.t.)

6) Two CD copies.